

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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| SUENO FITNESS INC., <i>et al.</i> , | : | Case No. 1:23-cv-415 |
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| Plaintiffs, | : | Judge Timothy S. Black |
| | : | |
| vs. | : | |
| | : | |
| OH STEELE FITNESS, LLC, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

ORDER

This civil action is before the Court upon the filing of Plaintiffs’ motion for order of possession or, alternatively, a preliminary injunction. (Doc. 10).

This civil action concerns the alleged breach of contract by Defendants OH Steele Fitness, LLC and Shane Franklin (the sole member of OH Steele Fitness), after Plaintiffs agreed to sell their gym business, including all equipment, the lease, and intellectual property. (Doc. 1). According to Plaintiffs, Defendants OH Steele Fitness and Franklin have taken possession of their equipment and other property but have failed to pay the purchase price. (*Id.*)¹

On July 15, 2023, Plaintiffs filed an emergency and *ex parte* motion for an order of possession pursuant to Ohio Rev. Code § 2737.19, asking for a Court order allowing Plaintiffs to take immediate possession of the gym equipment, based on fear that

¹ According to Plaintiffs, the gym is now operated under the authority of Defendants Fitness 1440, Inc. or Phoenix 1440, Inc., and Fitness 1440 and Phoenix 1440 authorized, approved, and continue to ratify OH Steele Fitness and Franklin’s wrongful acts. (Doc. 1 at ¶ 34).

Defendants would conceal or move the equipment from this jurisdiction. (Doc. 7). On July 19, 2023, the Court convened with Plaintiffs' counsel and Attorney Jeffrey Nye, who appeared at the initial conference in the limited capacity of representing Defendants OH Steele Fitness and Franklin at that conference.² (*See* 7/19/2023 Not. Orders). The Court then converted Plaintiffs' motion for possession to a motion for temporary restraining order, Ohio Rev. Code § 2737.20, and entered a temporary restraining order, enjoining Defendants from shipping or otherwise removing any gym equipment from the premises located at 827 W. Central Avenue, Springboro, Ohio 45066. (*Id.*) The Court also set a briefing schedule on Plaintiffs' motion for preliminary injunction. (*Id.*)

Plaintiffs, OH Steele Fitness, and Franklin twice agreed to extend the temporary restraining order and briefing on Plaintiffs' motion for preliminary injunction in an attempt to explore settlement. (7/21/2023 Not. Order; 8/4/2023 Not. Order). On September 7, 2023, Plaintiffs filed their instant motion. (Doc. 10). Following that filing, and pursuant to Local Rule 65.1 and this Court's standard practices, the Court immediately communicated with Plaintiffs' counsel and Attorney Nye to schedule another informal preliminary conference. Attorney Nye informed the Court that he has not been retained to represent OH Steele Fitness or Franklin, other than his representation at the initial conference and settlement communications. Attorney Nye further informed the Court that Franklin has represented to him that Franklin has been facing serious

² Mr. Nye has never been retained to represent Defendants Fitness 1440 or Phoenix 1440 in any capacity. It is unclear from the docket whether Defendants Fitness 1440 and Phoenix 1440 have been served with a copy of the summons and complaint, nor has any counsel entered their appearance on behalf of Defendants Fitness 1440 or Phoenix 1440.

health issues over the past few weeks, including a surgery scheduled for September 15, 2023.³

Having reviewed the pleadings, the Court finds good cause to extend the temporary restraining order and all deadlines in this case. Fed. R. Civ. P. 16(b), 65(b)(2). Specifically, the Court finds good cause because: (i) it appears Franklin’s serious health problems have hindered his ability to adequately participate, both in pleadings and through settlement discussions in this case; (ii) Defendant OH Steele Fitness does not yet have counsel, and, as a corporation, cannot appear in federal court without counsel, *e.g.*, *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993); (iii) Plaintiffs will not be prejudiced by an extension of the temporary restraining order, as an extension will continue to maintain the status quo; and (iv) it is unclear from the docket whether Defendants Fitness 1440 and Phoenix 1440 have been served, nor have these defendants otherwise appeared in the case. Thus, an extension of the temporary restraining order and deadlines provides an opportunity for all parties to be heard on the matter while maintaining the status quo. *See Procter & Gamble Co. v. Bankers Tr. Co.*, 78 F.3d 219, 226 (6th Cir. 1996) (“the purpose of a TRO under Rule 65 is to preserve the status quo so that a reasoned resolution of a dispute may be had”).

That being said, Defendants Franklin and OH Steele Fitness are put on **NOTICE** of the following: (i) additional extensions of time will not be granted absent a motion filed with the Court and demonstrating good cause or consent; (ii) failure to timely

³ Emails are on file with the Court.

respond to Plaintiffs' instant motion may result in the motion being treated as unopposed; and (iii) failure to timely respond to Plaintiffs' Complaint may result in default judgment being entered against Defendants OH Steele Fitness and Franklin. Defendant OH Steele Fitness is further reminded that it may only appear in federal court through licensed counsel. *Rowland*, 506 U.S. at 202.

The Court hereby sets the following deadlines:

1. Defendants Shane Franklin and OH Steele Fitness' answer or other responsive pleading to the Complaint (Doc. 1) is due on or before **September 29, 2023**;
2. Defendants' response in opposition to Plaintiffs' motion (Doc. 10) is due on or before **October 4, 2023**;
3. Plaintiffs' reply is due on or before **October 9, 2023**; and,
4. The temporary restraining order will expire on **October 19, 2023**.

Additionally, Pursuant to Local Rule 65.1, the Court sets this case for an informal preliminary conference by telephone **on October 2, 2023 at 11:30 a.m.**

COUNSEL/PARTIES SHALL CALL: 1-888-684-8852; Access code: 8411435;

Security code: 123456, and wait for the Court to join the conference. Failure to appear at the conference may result in the imposition of sanctions, including an entry of adverse judgment.

Plaintiffs' counsel **SHALL** take all reasonable and necessary steps to identify adverse counsel for all parties, serve Plaintiffs' instant motion and this Notation Order, and file forthwith a certificate of compliance with the Court. *See* S.D. Ohio Local Rule 65.1(a), (b).

IT IS SO ORDERED.

Date: 9/11/2023

s/Timothy S. Black
Timothy S. Black
United States District Judge